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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1119 OF 2006

Shri Rajanikant H. Joshi ...Appellants

v/s.

Shri Ramesh B. Naik ...Respondents

Mr.A.B.Ketkar, Advocate for the Appellant

Mr.P.S.Dani, Advocate for Respondent Nos. 1, 3 to 6
Mr. Palsuledesai with Mrs. Smita Mhatre, Advocate for Respondent no.8
Mrs. G.P.Mulekar, AGP for Respondent no.9

CORAM : B.H.MARLAPALLE,J.
DATED : 27th November, 2007

P.C.

Heard learned counsel for the Appellants who is agitating their grievance regarding the ownership title on the property more particularly located on survey no. 62/2 in this appeal which infact should be a Second Appeal. The Assistant Charity Commissioner by his order dated 21-3-2001 granted registeration to the Public Trust and trust properties were identified as Land Survey no.62/1, 62/2, 62/5 and 63/2. The Application was made under Section 72 of the Bombay Public Trust Act, 1950 and it was allowed despite the contest of the present Appellants.

2. Being aggrieved by the order passed by the Learned Assistant Charity Commissioner, the appellants filed Appeal under section 70 of the Bombay Public Trust Act alongwith the other opponents and both these appeals came to be registered as Appeal nos. 15/2001 and 19/2001. By Common Judgement and Order dated 30-6-2003, the Learned Joint Charity Commissioner was pleased to dismiss both appeals. Consequently, the appellants chose to file Civil Revision Application no. 73/2003 and 76/2003 and by common judgement and order dated 3-3-2006, the learned District Judge, Raigad was pleased to dismiss the applications. Hence, this appeal.

3. The only substantial question of law that was argued before this Court was regarding the ownership rights of the appellants on the property located at survey no. 62/2 alongwith the open land thereto and all the forums superior have concurrently held against the appellants.

4. Before the Assistant Charity Commissioner, the appellants had filed a written reply and relied upon 7/12 extract of survey no. 62/2, 63/2 as well as the order passed by the Tahsildar, Alibag regarding Hakk Nondani dated 30-12-1985. They had also relied upon copy of registered partition deed NO. 309 dated 8-6-1971 between Rajnikant Joshi and Arvind Joshi. It

is pertinent to note that none of the appellants ever entered into the witness box to lead oral evidence in support of their contentions. It is well known that 7/12 extracts by themselves cannot be accepted to be the document to prove the ownership of the subject property and 7/12 extracts are found in one coloumn i.e. ownership coloumn, possession coloumn and on calculation coloumn etc. It was necessary for the appellants to lead evidence and prove all these documents in support of their contentions to prove the ownership of the property in survey no. 62/2. Merely getting possession or merely on entering the name it would not be sufficient to prove the appellants ownership though they may be in possession of the subject property. It is, therefore, clear that the appellants themselves failed to prove their case regarding the issue of their ownership of the property situated in survey no.62/2 and hence this appeal does not involve any substantial question of law for consideration of this Court.

5. Hence, the same fails at the threshold and is hereby dismissed in limine.

[B.H.MARLAPALLE,J.]